

ADEPT
Legal Commentaries

December 2004

Parliament activity, November 29 - December 3, 2004

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During this period, the Parliament examined two drafts of great social significance: The Strategy for Economic Growth and Poverty Reduction and the Law on the optimization of legal framework for the business activity (the so-called "economic guillotine").

Also, a great interest represented the examination and adoption in its first reading of the draft law aimed to facilitate the deployment of young teachers in rural areas.

The Parliament examined a draft law in the first reading establishing essential facilities for the IT enterprises in order to facilitate their extension and promote research in this field.

I. Law on the Approval of the Economic Growth and Poverty Reduction Strategy (EGPRS)

ADEPT Comment: The Economic Growth and Poverty Reduction Strategy is a complex document, which includes strategies for the development of different sectors in order to accomplish the general objectives and priorities regarding the country's development on a medium term (2005-2007) and in a longer perspective.

The main objectives regarding the long-term development of Moldova are:

- a. Assurance of a socially-oriented and sustainable development;
- b. Reintegration of the country;
- c. European integration.

In order to achieve these objectives, the medium-term socio-economic policy must:

- a. Ensure economic growth;
- b. Reduce poverty and inequity, extend the participation of the poor population in economic development;
- c. Develop human resources.

The preservation of constant high pace of economic growth must be accompanied by a substantial improvement of the qualitative components of the development - increase the absolute volume and share of capital investments within GDP, increase economic openness towards innovations, increase the role and share of technologically-advanced branches of production, accelerate development of regional economy and infrastructure. The solution of these problems will be determined largely by the efficiency of the policies for the development of the private sector, regional development and successful implementation of the public administration reform whose results must lead to a significant increase of the quality of state policy, acceleration of the decision-making process and improvement of the professionalism of the employees working in central and local public structures.

The country's social policy needs to be improved substantially in order to create conditions to increase employment opportunities, facilitate the access of the people in need to employment, education, healthcare etc.

In order to decrease the irrationally high social gap, one plans to optimize the distribution of resources in the favor of the vulnerable citizens and families and increase the nominal character of the social security system.

Thus, the priority areas/sectors of SEGPR are:

- a. Private sector;
- b. Public administration;
- c. Social protection;
- d. Healthcare and education;
- e. Infrastructure;
- f. Regional development;
- g. Environment.

A part of the costs of these actions will be covered from the public budget, the remaining part will be paid from grants and technical assistance offered by donors.

Some planned activities have no financial coverage, therefore requiring attraction of additional means.

It is considered that the transparency of the SEGPR implementation process, the participation of the civil society in the monitoring and evaluation, continuous social dialogue, and collaboration with different partners are, to a great extent, the guaranties of a successful development of the economic growth and poverty reduction policy.

Through the adopted Law the Parliament approved the Strategy itself, which was recently appreciated positively by the international financial institutions. The Government was authorized to make decisions that do not conflict with the content of the Strategy, regarding the operation of changes and amendments to some of its chapters.

The Law also stipulates that the Government, within one month from the effective date, shall adjust the effective social and economic development programs and the plans of actions to the objectives, priorities and the policies expressed in the Strategy.

Annually, the Government shall submit to the Parliament a report on the implementation of the Economic Growth and Poverty Reduction Strategy.

II. Law on the Rectification of the State Budget for 2004

ADEPT Comment: The respective law provides for a 4.5 million Lei increase of budget allocations for the State Agency for Forestry. These resources shall be used for the regeneration and extension of the forests. They are covered from the budget allotted for the payment of the state external debt, as well as from the national environmental fund.

The allocation of funds for the State Agency for Forestry "Moldsilva" shall develop the State program for the regeneration and development of forests for 2003-2020.

The reserves for the payment of state external debt were formed after adjustments made by the external creditors.

III. Law on Special Courier Service

ADEPT Comment: The law adopted by the Parliament established the legal framework, the principles of activity, the prerogatives, the rights and duties of the State service of special couriers, and the means for supervision of its activity.

The State service of special couriers is defined as a part of the state security forces and represents an independent body with special destination of the state executive power, aimed to ensure the preservation, dispatch and operative distribution of the country's official correspondence.

The Law stipulates:

- Principles of the activity of the Service;
- Structure of the Service;
- Collaboration of the Service with the bodies of the executive power.

A separate chapter is dedicated to the prerogatives, duties and rights of the employees of the Service. Thus, the prerogatives of the Service include:

- Timely contract-based and free of charge distribution of presidential, parliamentary, governmental, diplomatic correspondence, classified correspondence issued by the state, public administration authorities, presidents, prime-ministers of the states under the intergovernmental Agreement regarding the Service of special couriers of the Commonwealth of Independent States;
- Contract-based and paid distribution of the correspondence of the public administration authorities and economic structures (including classified correspondence).

The Law includes provisions regarding the personnel and the means of the Service; social and legal protection of the employees equal to those established by the legislation for the employees of the Ministry of the Internal Affairs.

The provisions of the relevant law substitute the existing Government provisions and decisions previously applied in the field, this fact will exempt the state budget from immediate additional expenditures.

IV. Draft Law on the Optimization of the Legal Framework regulating Business Activity

ADEPT Comment: The draft adopted in the first reading was aimed to establish the principles and activities necessary for the revision of the legal framework to eliminate the inefficient regulations which are not market-oriented, as well as to establish the future mechanism for assurance of stability and quality of the regulations regarding business activity in order to avoid the barriers in the Moldovan business environment.

The text includes a series of principles, which lay the foundation for the business activity:

- Transparency and stability of the regulations governing business activity;
- Presumption of observing the legal acts by the business agents;
- Noninvolvement of public authorities and servants in business activity;
- Financing from the budget of the ministries, departments, local public administration, other administrative authorities, as well as the inspectorates, agencies, services and other related and/or subordinated institutions with regulatory, control and state inspection functions;
- Delimitation of regulatory, control and inspection functions of the administrative authorities from the functions of rendering services of assessing the conformity and other paid services;
- Non-admittance of establishing and collecting by administrative authorities of other payments for services of issuing licenses, authorizations and other documents regarding the business activity, except the payments established directly by laws and/or Government decisions;
- Non-admittance of establishing and requesting other documents for issuing the licenses, authorizations and other documents regarding the business activity except the those established directly and exhaustively by laws and/or Government decisions;

The Law also provides that all the legal acts of the Government and other administrative authorities are subject to revision, analyzing their content to evaluate the compliance with the market economy principles.

Each official document will be examined based on the following criteria:

- Correspondence of the principles of business activity;
- Compliance of hierarchically superior official acts, published in Monitorul oficial;
- Introduction of the revised acts in the Register of official acts regulating the business activity.

The revision of official acts will be performed in several stages:

1. Each administrative authority examines the official acts from its field of activity based on the criteria established by the law and makes the list of the official acts.
2. The national group examines the official acts and the informative notices, presented by the administrative authorities according to the established criteria and decides the introduction of each act in the Register.
3. The national group elaborates the final version and the National Commission approves the draft of the Register and submits it to the Government for approval.

It is also provided that from the effective date no official act of the administrative authorities can be invoked and has no legal power if not published in Monitorul oficial.

With the approval of the special Register, the Government will repeal the official normative acts that are not included in the Register.

It is also suggested that, within six months from the effective date of the respective law, the ministries and the departments examine the laws that regulate their fields of activity in order to evaluate their compliance with the principles of the regulation of the business activity.

The need to adopt the respective law is determined by the fact that nowadays the prerogatives of the institutions with the functions of control and provision of paid services are stipulated in about 350 different official acts - laws, Government decisions, regulations, ministerial and departmental orders.

Many of these official acts are out-dated and, thus, incompatible with the principles of market economy.

Others, although containing useful and appropriate provisions, do not make up a coherent, transparent and foreseeable framework.

The international experience in the field shows that the proposed method will:

- Avoid the delay in the implementation of the reform;
- Assure the transparency of the process as a result of the dialogue between the public and private sector;
- Obtain the expected results in a an extremely reduced term (approximately 7 months from the effective date of the draft law);
- Harmonize automatically the national legislation in the field, as well as its enforcement mechanism, with the international and European rigors and requirements of a functional market economy.

The discussions on the respective draft provoked the negative reaction of the representatives of the parliamentary opposition. They considered that it was not the right time for the respective reform because a vacuum could remain in the control prerogatives during the parliamentary elections, when the Parliament would not be able to modify the legislation and the Government would exercise the operative conduct of public affairs.

This concern was explained by experts by the alleged hope of the opposition to overtake power and lack of the administrative possibilities to consolidate their positions and establish a certain control over businesses in the situation when this control is performed by the current government.

Although with several objections, the idea of this draft was appreciated positively.

V. Draft law for amending the Law on Education

ADEPT Comment: The Parliament passed a draft law in the first reading designed to stimulate young teachers to seek employment in the primary or secondary educational institutions from rural areas.

Thus, the law provides for the institution of decrees according to which the graduates of higher education institutions as well as specialized secondary education institutions who agree to be employed in educational institutions from rural areas will benefit from the following facilities during the first three years:

- Free housing provided by the local public administration for their activity in the relevant area;
- Terrain for those who want to build their own house (upon request);
- Long-term credits with minimal interest for those who decide to build a house;
- Unique indemnity equivalent to 4 minimal salaries corresponding to the relevant category of wages;
- 50 percent increase of the salary;
- Work experience will be calculated as 2 years for one year worked in rural areas;

- 50 percent discount for 6 internal round trips;
- Monthly compensation of the cost of 30 kWt of electricity and free distribution of 1 sq. m. of firewood and 1 tone of coal;

The law will be implemented starting with 2005 requiring 7500 lei annually per each young specialist.

VI. Draft law on stimulation of the activity of IT companies

ADEPT Comment: The draft provides that the commercial societies whose activities correspond to the "Program accomplishment" service after the constitution of the social capital as provided by the legislation and the declaration of the first income are exempt from income tax for 7 consecutive years, starting from the first day of the year when the agreement on tax exemption was concluded with the Main State Tax Inspection of the Ministry of Finances.

The above-mentioned exemption will be provided if the societies will comply with the following requirements:

- The enterprises shall not have arrears towards the national public budget;
- The enterprises shall possess a license issued by the National Agency for Communications and Information for the relevant type of activity;
- The employees of the specified commercial societies and the researchers from the R&D institutions in the field of IT shall benefit from exemption of income tax if the following requirements are met:
 - Their job positions are in compliance with the laws;
 - The job position is part of a specialized department in information technologies, highlighted in the organization structure of the company, such as IT center, direction, department, section or other similar departments;
 - The company provides the justification papers (act of creation of the enterprise, license, organization chart, job description, graduation diploma issued by a higher education institution; status of payments for the employees of the enterprise, the internal order confirming the name of the position, etc.).

Parliament Activity, December 6-10, 2004

14 December 2004

During the period covered Parliament examined only several legal acts, one of the most important being the Law on Official Statistics passed at the recommendation of the Government. Further, deputies examined several drafts submitted by opposition, but these were not endorsed by the majority faction despite the many arguments.

I. Law on Official Statistics

ADEPT Comment: The law regulates the organisation and operation of the single official statistics system, outlines general principles for collection, processing, centralization and storage of statistic data on economy, social sphere, demographics, financial system and judiciary.

Subject to these provisions will be the data necessary for developing economic and social policies, strategies, decisions of public authorities and businesses, for scientific research, informing public opinion, submission of data to international organisations, etc.

Law provides for:

1. Key notions in the field.
2. Tasks of the statistics: collection, processing, tabulation, centralization, analysis, and dissemination of statistics data; developing statistics methodologies in line with international standards; statistics research; explanations of the data so as to avoid any of its misinterpretation; ensuring compliance with the key principles of official statistics; research and development in the field of statistics, etc.
3. Principles: impartiality, code of conduct, relevance, transparency, confidentiality, etc.
4. Official statistics bodies: central statistics body and its territorial structures; statistics departments within central and local government, National Bank, etc.
5. Rights and obligations of the official statistics bodies.
6. System of statistic classification, statistics registries.
7. Conducting statistics research.
8. Confidentiality of the individual statistics data and their use.

The new law brings statistics in line with the European system and realities of the day.

II. Law on Cancelling Debts of Non-privatized Agricultural Enterprises

ADEPT Comment: Parliament decided to cancel historic debts to the state budget of agricultural enterprises that haven't been privatised. In particular the law refers to agricultural enterprises that did not join "Pamint" privatization program.

Cancelled debts amount to 35 million Lei; on top of that the amount would surge given that local governments were "recommended" to cancel debts on local taxes. In addition, local government was recommended to accept social-cultural edifices in exchange for the debts to local budgets.

During the December 9, 2004 session deputies rejected several draft laws, in particular:

1. Draft law on completing the Code of Civil Procedure

The draft envisaged completion of the Code with a new provision providing for indexation of the adjudicated amounts. The reason for the amendment was that usually those accused hinder the trial and timely enforcement of the court judgement. Thus, out of 54 thousand civil litigations, 11 thousand (20%) were examined in more than 2 months, which is a reasonable term. There are many cases examined in 5-7 or even 10 years. Accordingly, the adjudicated money devalued during that time and the plaintiff ends with nothing even if he/she wins the case.

2. Draft law on amendment of the Code on Administrative Offence

Law on Petitioning provides that any petition shall be examined within 30 days of the submission. To ensure the proper enforcement of that provision, legislators intended to provide for sanctions in the Code on Administrative Offence for the failure to observe the aforesaid term, for the groundless refusal to accept the petition, for decision running counter to the law. Parliament refused to pass the draft on the grounds it would delay the hearing of penal cases.

Parliament Activity, December 13-17, 2004

21 December 2004

During the past six sessions of the current year, the deputies have examined seriously several projects bearing an electoral subtext and have been indifferent towards the projects that do not arouse the general interest at the moment. During the December 16 session, the deputies discussed several drafts of major importance. The most ardent discussions were held on the draft of the strategy of fighting corruption and on the report of investigation commission that verified the information regarding the real estate of the PPCD leader Iurie Rosca.

I. National strategy of prevention and fighting corruption and the Action Plan for implementing the strategy

ADEPT Comment: The act adopted by the Parliament contains a series of findings and appreciations of the existing situation in the relevant field. Political, economic and social transition from the period of the declaration of independence is considered one of the general causes of the corruption.

Corruption is considered a complex, multi-structural and multi-dimensional phenomenon whose complexity is determined by different causes: economic, institutional, legal, political, social and moral.

The economic causes reside in the increased cost of living with a continuously growing tendency; degradation of economy and impoverishment of the population; low salaries of the public servants; an unviable state budget; over-regulation of the private sector.

The institutional causes include the deficient personnel policy which generates the search for methods of illegal income; promotion of incompetent persons to the responsible posts; lack of transparency in the activity of central and local public administration; excessive freedom given to the decision-makers; reduced possibility for disclosure the corrupt persons; insufficient technical endowment of legal institutions; lack of human and logistic resources, and efficient tactics.

Legal causes include several imperfections in legislation, as well as the lack of efficient mechanisms for its implementation.

Social and moral causes are related to the traditions, mentality, and culture and include the disintegration and demoralization of the society; erosion of ethical values; insufficient information of the civil society; civic apathy; public tolerance; social polarization; dependent mass media.

Political causes include the lack of will and political accountability; existence of internal and external factors that impose the group interests in decision-making; unsettlement of the problem of the eastern districts; errors in the process of implementing the economic and social reform; disloyal political competition; trafficking in influence upon mass media.

The declared objectives of the Strategy are:

- provision of law supremacy;
- provision of the independence of the state authority branches and the prevention of corruption in each of them;
- perfection of legal framework according to the requirements of international legislation;
- provision of transparency in the activities of public institutions, access to information, promotion of ethic standards;
- stimulation of the civil society and private sector in the prevention of corruption; creation of an atmosphere of intolerance towards the corruption phenomenon.

The Strategy suggests a number of measures for the prevention and fighting against corruption:

- suppression of corruption by applying efficient criminal norms;
- prevention of corruption through the elimination of the opportunities for corruption from the systems and procedures of the public institutions;
- education of all the segments of population in the spirit of intolerance towards corruption and the development of citizens' active support in the prevention and suppression of corruption.

One also suggests perfection of the legal framework; efficiency of the institutional system; provision of transparency and accountability in the political activity; diminution of the corruption effects upon the private sector and intensification of the cooperation of public institutions with the civil society.

The deputies have also adopted an action plan for the implementation of the strategy, which contains several chapters regarding the established goals and the mechanisms that are going to be implemented.

The deputies from the opposition qualified the adoption of the strategy as a pre-electoral idea because the document contains declarative provisions and is not subject to adequate international examinations. In response the authors informed that the Strategy has been examined by the Council of Europe and other specialized bodies and has been discussed during several conferences, as well as national and international round tables.

The opposition factions also solicited that before the adoption of a new document, the information about the implementation of the previously approved documents be presented because legal and governmental acts in the field are approved practically every year but their effect is not reduced.

As the strategy has a complex content, detailed information will be provided further.

ADEPT Information: The Parliament, the Government and the President of Moldova issued previously several acts regarding the concentration of the efforts in fighting corruption and related phenomena. In this context it should be mentioned:

Parliament decision 518/07.07.95 about the formation of a special Commission that exercises control upon the execution of legislation regarding the fighting against corruption.

Law 900/27.06.96, regarding the fighting against corruption and protectionism.

President's decree No.57 from 28.05.2001 regarding the creation of Coordinating Council for the suppression of corruption and crime.

Government decision 898/03.08.2004 regarding the approval of Action Plan for the efficiency of the interaction and collaboration of legal and control institutions in fighting against crime and corruption.

Government decision 1377/18.11.2003 regarding the approval of the Plan of measures for fighting corruption and provision of the law supremacy.

Government decision 1017/04.11.99 regarding the State Program about the fighting against crime, corruption and protectionism for years 1999-2002 and about the fulfillment of the decision of the Parliament "regarding the activity of General Prosecution Office and Ministry of Internal Affairs in fighting organized crime and corruption".

Government decision 199/02.04.96 regarding the measures of fighting corruption, protectionism and organized crime.

Government decision 780/14.03.96 regarding several measures for fighting corruption and protectionism.

II. Law on the Revision and Optimization of the Normative Framework for the Regulation of the Business Activity

ADEPT Comment: The respective law, also known as "economic guillotine", is aimed to establish the principles and activities necessary for the revision of the legal framework in order to eliminate and avoid the regulations which do not correspond to legislation and are not market-oriented, as well as to assure the stability and quality of the regulations regarding business activity in order to avoid the barriers in the business environment.

The adopted legislative act establishes the main principles of revising and optimizing the normative framework, which regulates the business activity:

- Transparency and stability of the regulations governing business activity;
- Presumption of observing the legal acts by the business agents;
- Treatment in favor of business agents of doubts appeared when applying the legislation regarding the business activity;

- noninvolvement in business activity, including the non-admittance of suspending the business activities, except the express cases regulated by the law;
- delimitation of regulatory, control and inspection state functions of the administrative authorities from the functions of rendering services of assessing the conformity and other paid services;
- Non-admittance of establishing and collecting by public administrative authorities of other payments for services of issuing licenses, authorizations and other documents regarding the business activity, except the express established payments;
- Non-admittance of establishing and requesting other documents for issuing the licenses, authorizations and other documents regarding the business activity except the express and exhaustively established documents.

III. Law on Providing Facilities for the Employees in the Field of Culture and Art

ADEPT Comment: Through the adopted law, the Parliament decided that the employees in the fields of culture and arts with special merits in the creation and promotion of national values, who have at least 20-year work experience in the field, could benefit from an indemnity ranging from 300 to 500 Lei per month. The indemnity will be established by the Government at the proposal of the Ministry of Culture, with the consultation of creative unions.

It was also established that some categories of creative workers (professional dancers, chorines, circus artists) with a work experience in the respective field of 20 years will have the right to pension for a work experience calculated as 40 percent from the monthly average salary of the last five years of activity until they reach the general retirement age (57 for women and 62 for men).

IV. Law on Creating Facilities for Young Teachers

ADEPT Comment: Through the adopted law was established that the graduates of the higher education and vocational institutions, who get employed upon distribution in the education institutions from rural areas, will benefit from:

- one-time indemnity: for the graduates of the higher education institutions (30.000 Lei); for the college graduates (24.000 Lei) with their three-year distribution of activity in the education institutions from rural areas;
- 20 percent increase in the wages for the young specialists from education field, employed in rural areas;
- monthly compensation of the cost for 30 kWt of electric power, one square meter of firewood and one ton of coal.

The facilities will be provided based on an agreement that the graduate will sign with the Ministry of Education. In case the agreement is cancelled before 3 years, the amount paid as an additional indemnity shall be reimbursed to the budget.